

FILED

JUL 15 2008

JAMES E. STEVENSON,

Plaintiff,

VS.

HARVEY BURKHART et al.,

Defendants.

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY W H DEPUTY

No. CIV-08-601-W

ORDER

On June 20, 2008, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation in this matter and made various recommendations not only regarding the status of the Application to Proceed in Forma Pauperis filed by plaintiff James E. Stevenson, proceeding pro se, but also regarding the affirmative defense of venue. Stevenson was advised of his right to object to the Report and Recommendation, but no timely objection has been filed. Stevenson did however on July 8, 2008, pay the filing fee of \$350.00 in full to the Clerk of the Clerk.

Upon review of the record and in light of Stevenson's payment of the filing fee, the Court has considered only that portion of Magistrate Judge Argo's Report and Recommendation that pertains to the issue of venue. Stevenson has named as defendants in this matter Harvey Burkhart, Sheriff of Carter County, Oklahoma, Deputy D. English and Deputy Shannon Davis, and he has alleged that these defendants in violation of title 42, section 1983 of the United States Code deprived him of his constitutional rights when they inter alia wrongfully arrested him and subjected him to cruel and unusual punishment. In particular, Stevenson has asserted that defendants English and Davis

used excessive force in effecting the arrest, and as a result, he sustained severe injuries.

The Court is permitted under certain circumstances to address sua sponte this affirmative defense , and it is appropriate to do so "where 'the defense is obvious from the facts of the complaint and no further factual record is required to be developed,' and 'only if it is clear that the plaintiff can allege no set of facts to support . . . venue.'" Johnson v. Christopher, 233 Fed. Appx. 852, 853-54 (10th Cir. 2007)(quoting Trujillo v. Williams, 465 F.3d 1210, 1217 (10th Cir. 2006))(footnote omitted)(cited pursuant to 10th Cir. Rule 32.1).

In so doing, the Court is mindful that section 1983 does not contain a specific venue provision; venue is determined by reference to title 28, section 1391(b) of the United States Code, a general venue statute.

Venue is appropriate in the Western District of Oklahoma under section 1391(b) only if one or more of the defendants reside in this district, a substantial part of the events occurred here or there is no other judicial district in which the action may otherwise be brought. Since all defendants allegedly reside in, and the events that give rise to this lawsuit occurred in, Carter County, Oklahoma, which is located in the Eastern District of Oklahoma, the Court finds that venue is not proper in the Western District of Oklahoma. The Court further finds that Stevenson can allege no set of facts to support venue in this judicial district under section 1391(b).

As Magistrate Judge Argo noted, this Court, if it be in the interest of justice, may transfer this matter to the Eastern District. E.g., 28 U.S.C. § 1406(a) (in the interest of justice, court shall transfer case to any district in which it could have been brought). In exercising its discretion, the Court finds that transfer, rather than dismissal, of this matter would expedite the orderly adjudication of this case. E.g., Goldlawr, Inc. v. Heiman, 369

U.S. 463 (1962).

Accordingly, the Court

(1) ADOPTS that portion of the Report and Recommendation issued on June 20, 2008, regarding venue;

(2) in light of Stevenson's payment of the filing fee in full, deems MOOT not only Magistrate Judge Argo's suggested disposition of Stevenson's Application to Proceed in Forma Pauperis, but also the Application to Proceed in Forma Pauperis itself; and

(3) pursuant to section 1406(a), DIRECTS the Clerk of the Court to transfer this matter to the United States District Court for the Eastern District of Oklahoma.

ENTERED this 15th day of July, 2008.


LEE R. WEST
UNITED STATES DISTRICT JUDGE